In The

Supreme Court of the United States

United States of America, and;
State of California, and;
ex rel. Miro J. Satalich,
Petitioner(s),

v.

City of Los Angeles
Respondent.

On Petition For Writ Of Certiorari to the United States Court of Appeals for 9th Circuit

PETITION FOR WRIT OF CERTIORARI

Miro J. Satalich, Pro se
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QUESTIONS PRESENTED

I. Did the Appellant, as a City of Los Angeles employee, being harassed for reporting fraud, have the legal right, in accordance with Federal Rules of Civil Procedure, IV. Parties, Rule 24, to intervene into CV-77-3047HP, a consent decree, where federal and state funds are being used, to file a Title U.S.C. 31 § 3730(h) claim?

II. Pursuant to Federal Rules of Civil Procedures, did the Defendant City of Los Angeles have a legal obligation to respond to the Appellant's Motion and Complaint in intervention?

III. The records show, the City of Los Angeles was properly served numerous times, yet did not respond, and/or was allowed by the Court to respond late even in a "show cause" as to why default and default judgment should not be awarded to the Appellant?

IV. As an Appellate Judge presiding over a District Court case, and overseeing a Consent Decree, for more than 20 years, have an obligation to hear Appellant's Title 31 U.S.C. § 3730(h) Motion and Complaint for harassment, or was he obligated to pass it down to be heard by a lower C urt?

PARTIES

United States of America, and; State of California, and;
ex rel. Miro J. Satalich
Appellant, Petitioner,

v. CV-04-9391-GAF-(PLAx)

City of los Angeles
Respondent.

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Other Authorities:

Petitioner Miro J. Satalich respectfully prays that this Court grants a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered on September 23, 2005, and mandate issued on October 21, 2005 in Appeal **No.: 05-55483**.

OPINIONS BELOW

The September 23, 2005 opinions of the court of appeals are set out at **Appendix-A**, and mandate dated October 21, 2005 at **Appendix-B** to the Petition.

JURISDICTION

The decision of the court of appeals was entered on September 23, 2005. The jurisdiction of the Court is invoked pursuant to Title 28 U.S.C. § 1254.

STATUTES AND REGULATIONS INVOLVED

In accord with Title 28 U.S.C. §§ 1253, and 2101(e), this action, being a Title 31 U.S.C. § 3730(h) that being a section of a Congressional Act, thereby, falls squarely under U.S. Supreme Court Rule 11. Also, other statutes and regulations involved are Title 28 §§ 47, and 291, sections of the Federal Rules of Civil Procedures, and the California Codes Code of Civil Procedure section 416.10-416.90 (416.50(a)(b)),

STATEMENT OF THE CASE

I.

From March 30,1987 to June 22, 2000 the Appellant was a City of los Angeles employee, believes, that for the years of being harassed for reporting fraud and waste to City government, and pursuant to Title 31 § 3730(h), and Federal Rules of Civil Procedures Rule 24, said Appellant had a

substantive right to intervene into Case No.: CV-3047HP, *USA v. City of Los Angeles*. Taking into account that at that point in time, three and six years was the established norm for statute of limitations for § 3730(h) claims. Since then, *Graham County Soil & Water Conservation District et al. v. United States ex rel. Wilson No. 04-169. Argued April 20, 2005 - Decided June 20, 2005* established otherwise, but because of dates should not impact this case. Also, intervention was proper because the City was already in a civil action, and in accordance with Title 31 U.S.C. § 3730(e)(3), barred persons from filing a qui tam § 3729 et seq. claim. In the March 19, 1999 intervention, to be made whole, the Appellant asked for all elements within title 31 U.S.C. § 3730(h), and 1.5 million in damages. Further, after filing the March 19, 1999 intervention, the Appellant discovered evidence of Appellate Judge Harry Pregerson being in intrajudicial and extrajudicial conflict of interest with the City of Los Angeles which explained his remaining silent to protect the City. He closed CV-77-3047HP on the same day of filing the second much larger intervention, by backdating to August 7, 2000. The Appellant yet discovered more extrajudicial evidence of Appellate Judge Harry Pregerson's conflict of interest with the City of Los Angeles that merited a " **Petition the Court to reopen CV-77-3047 to hear this noticed show cause as to why Default Judgment should not be awarded to the Plaintiff,**" that was filed on November 8, 2004, hence, the cause for this petition. **See Appendix-G, Time Line**. Because of non response in the March 19, 1999 default and default judgment, the Appellant pled for the same award, with the exception of monetary interest in the "**Show Cause**" filing of November 8, 2004.

THE REASON FOR GRANTING THE WRIT

The Appellant believes, that pursuant to the Court Docket Record of CV-77-3047, and Title 28 U.S.C. §§ 47, and 291(a)(b), Appellate Judge Harry Pregerson **was never** given permission by the 9th Circuit Chief Judge, or from the Chief Justice of the U.S. Supreme Court **to sit temporary for more than twenty years** to hear CV-77-3047. Clearly, on November 2, 1979, when Judge Pregerson was elevated to the 9th Circuit Court of Appeals, **the Docket record shows no note of, no mention of, or that he was to remain on, designated, and/or assigned to supervise CV-77-3047 for more than twenty years**.

See Appendix-C. Further, other than loose rhetoric, the Defendant, City of Los Angeles, as well as District Judge Gary A. Feess did not provide any material evidence in CV-04-9193GAF to substantiate Appellate Judge Harry Pregerson having authority to sit on CV-77-3047 for more than twenty years, let alone to hear interventions or other pleadings into same.

The overwhelming evidence presented shows a definitive conflict of interest between Appellate Judges Harry Pregerson, U.S. District Court Gary A. Feess, and the City of Los Angeles, to stifle and silence the Appellant in these lawsuits.

In **05-55483**, dated June 30, 2005, titled "**Brief of Appellee**," the City's "**Proof of Service**" was unattested/unsigned, and they also **failed to serve** the U.S.A, and State of California, but made it a point to serve a copy to Judge Gary A. Feess!

See footnote[1]. After filing the intervention on March 19, 1999, evidence surfaced in the Appellant's Workers' Compensation case, No.: LBO 264930 to the effect that Appellate Judge Harry Pregerson, along with all City officials, and EPA (Felicia Marcus) were aware of the Appellant being harassed, yet, **all remained silent**.

See Appendix-C. In Judge Gary A. Feess's dismissal order, Docket No. 30, he used denigrating phrases such as "**novel theory**," "**absurd results**," "**puzzling**," **bizzare argument**." Yet he accepted Defendant's filings of non-legal terms of "**Special Appearance**," and "**instant motion to dismiss**" not found anywhere in the Federal Rules of Civil Procedures, and also **acted as counsel for the Defendant**.

Further, the District Court accepted the City's behavior of filing **unattested/unsigned** to **Proof of Service**, in CV-00-08882GAF, which carried over into CV-04-9193GAF, and was then again accepted into the 9th Circuit of Appeals. Two documents, namely filed into Docket No.: **05-55483,** and entered on **4/15/05** and **7/1/05**, clearly indicate, as was done by the District Court, that the 9th Circuit Appellate **accepted** and **ruled on illegally filed documents**. The double standard is, if the same was done by the Appellant (being pro se), the case would be immediately tossed in favor of the Appellee.

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[1] By Court Reporter F. Tsuda. Place and time: Long Beach, California; December 21, 1999; 10:00 a.m.. This summary of court transcripts was certified to be true, by the Honorable Charles Williams, Workers' Compensation Administrative Judge, State of California. (In part) Focusing on page (37), 12, lines 13.5 to 15: ***"From 1990 through 1995, the plant manager was John Crosse. Applicant's complaints reached John Crosse, the executive division, the EPA, and Judge Pregerson and many others."***

Also, 9th Circuit Unpublished Dispositions Date Filed 09/23/2005 shows: Appellate Judges **Stephen Reinhardt**, **Pamela Rymer**, and **Michael Hawkins** heard and ruled on 16 cases, two being the Appellant's without oral argument. Additionally, on 09/23/2005, Judges Reinhardt and Hawkins heard and ruled on two other cases with two other judges. Clearly, not **Article III Judges**, but instead, rubber-stamped rulings, without oral argument or merits of the case being heard or considered.

QUESTIONS PRESENTED TO THE COURT

I.

Did the Appellant, as a City of Los Angeles employee, being harassed for reporting fraud, have the legal right, in accordance with Federal Rules of Civil Procedure, IV. Parties, Rule 24, to intervene into CV-77-3047HP, a consent decree, where federal and state funds are being used, to file a Title U.S.C. 31 § 3730(h) claim?

Refer to Title 31 U.S.C. § 3729 et seq. Because of language within § 3730(e)(3), and the ACD, the Appellant believed he was barred from filing a qui-tam action. However, on March 19, 1999, well within three and six-year statutes of limitations of § 3730(h), filed an intervention into CV-77-3047HP. (**See Appendix-E items' #322, and #324**) all parties were properly served. The Appellant is informed and believes, that in accordance with Federal Rules of Civil Procedures, Pleadings and Motions, Rules 7, thru 15, the City of Los Angeles was obligated to respond and/or object to the Appellant's **motion** to enter CV-77-3047HP, but as shown on the record, did neither. Moreover, the Appellant is informed and believes the Court, or Appellate Judge Harry Pregerson, who was overseeing CV-77-3047HP, was obligated to rule one way or the other, if the Appellant was allowed to enter, however, **Judge Harry Pregerson remained silent**

The questions presented to the Court:

(A) Did the Appellant have, pursuant to Title 31 U.S.C. § 3730(h), and FRCP Rule 24, a legal right to intervene into CV-77-3047HP?

(B) Was 9th Circuit Appellate Judge Harry Pregerson legally obligated to rule and hear the Appellant's complaints or should Appellate Judge Harry Pregerson, instead of remaining silent, have passed the intervention down to a District Judge to hear the harassment 31 U.S.C. § 3730(h) complaint?

II.

"Pursuant to Federal Rules of Civil Procedures, did the Defendant City of Los Angeles have a legal obligation to respond to the Appellant's Motion and Complaint in intervention filed on March 19, 1999?"

The Court Docket Record shows (**Appendix-E, item #321**) and letter dated September 15, 2000, (**Appendix-F**) from Richard F. Janisch, Manager of Court Operations stated twice, the "**motion**" was "**filed**" and "**proposed complaint**" was "**lodged**." Therefore, the Appellant contends, pursuant to FRCP, of Pleadings and Motions, III, Rules 7 thru 15, the City of Los Angeles was obligated by law to respond and/or object to the Appellant's "**motion**," which the record shows, they did not do, and therefore, in accord with FRCP, rule 55 was in default.

Question to the Court:

(1) Was the City of Los Angeles, pursuant to the clear language of the FRCP Pleadings and Motions, III, Rules 7 thru 15 obligated to respond? The Appellant believes the City was!

(2) By failing to respond to the "motion, " was the City of Los

Angeles pursuant to FRCP, Rule 55 in default?

III.

"The records show, the City of Los Angeles was properly served numerous times, yet did not respond, and/or was allowed by the Court to respond late, even in CV-04-9193GAF "**show cause**" as to why default and default judgment should not be awarded to the Appellant?"

See Footnote[2]. Court record shows, the City of Los Angeles, and all other parties, were properly served. in CV-04-9193GAF, the City of Los Angeles was served twice (**see Docket Entries #4 and 14, 15, 16, and 17**). Docket #4 shows the City was served on 11/12/2004, with the answer due 12/2/2004. The City **did not respond**, claiming they were not properly served, stating the service should have been sent to the "**Mayor or City Clerk**," and **not the City Attorney**. (See Docket #12) On 12/20/2004, and because the Appellant filed for **Default** and **Default Judgment**, the City finally responded, in the non-legal term of " **Special Appearance**." I disagree, and believe the Court made an erroneous ruling, that forced the Appellant into additional expense to have to re-serve all parties a second time, with the City being allowed to stall and also **respond late** in the second serving with impunity.

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[2] **California Code of Civil Procedures**

416.50. (a) A summons may be served on a public entity by delivering a copy of the summons and of the compiaint to the clerk, secretary, president, presiding officer, or other head of its governing body.

(b) As used in this section, "public entity" includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state.

The First serving in CV-04-9193GAF: The summons and complaint was sent by FedEx Express, on **November 10, 2004**, to the **City Attorney**, care of Robert Cramer, Assistant City Attorney. Note, the word **Mayor**" as mention by the City **does not appear** anywhere in California Code of Civil Procedures, section 416.50.

The Summons and complaint was signed for by L. Jackson, a woman employed as a receptionist by the City Attorney's Office, on November 12, 2004. Ms. Jackson also signs "**Proof of Service**" for the City. **The City Attorney is an elected official, therefore**, must be considered by California State law sec. 416.50.(a): "**or other head of its governing body**." Also, in accord with Docket #12, the very fact the City responded on **12/20/2004** in a Declaration and "**Special Appearance**" by Assistant City Attorney Robert Cramer, proves the City was properly served, responded late, and in **default**. (**Also see Appendix - H**). To further prove my point that the City was properly served, **for some not** so strange reason Mr. Cramer's name, as the Los Angeles City Attorney appears on the **U.S. Supreme Court Docket No.: 04-1420**, and on **Dockets CV-00-08882GAF** and **CV-04-9193GAF**. (**See Docket Entry #12**) therefore, by Mr. Cramer responding as a

> **"Special Appearance in Opposition to Satalich Request for Entry of Default [10] filed by Defendant City of Los Angeles.;"**

Accompanied by a Declaration of Robert Cramer, **(Entered: 12/21/2004)**" acknowledged that the City was properly served on **November 12, 2004**, and in fact, for a **second time, in default**! See Docket Entry #4. The Appellant contends, for the City to properly respond to the " **Petition the Court to reopen CV-77-3047 to hear this noticed show cause as to why Default Judgment should not be awarded to the**

Plaintiff," should have filed their response/objection on or before the Court's set due date of **12/2/2004**, and not three weeks later on **12/20/2004**, or after "**default was filed**." Borrowing part of an article from Dr. Charles Heckman "Comments on the Ninth Circuit pro se Task Force Report, Charles W. Heckman, Dr. Sci. A Matter of Justice Coalition (AMOJ)Committee for the Ninth Circuit":

> "**Different standards are applied to different litigants.** Powerful plaintiffs/defendants seek to delay litigation until the opponent dies or is forced to end litigation for financial reasons. Some well-represented litigants do not respond to summons until a motion for default has been entered, and judges routinely excuse the failure and refuse to enter default judgment. The same judges are quick to dismiss lawsuits because a pro se plaintiff has missed a deadline by one or two days, even when the cause of delay was beyond the control of the litigant."

Also see footnote[3]

Clearly, as outlined by Dr. Heckman, because the Appellant being pro se, Judge Feess allowed the City to do what ever they choose, with impunity, fully knowing in

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[3] **Fundamental role of the judiciary**

"In 1947, Justice William O Douglas wrote that the basic function of any court is to judge the case on the merits. That means that two factors and only two should influence the decision: the law and the facts. If all is functioning as it should, then any case in which the facts indicate that one party must prevail under the law should have only one outcome. This is true regardless of whether or not the party whose case is supported by the law and the facts is represented by counsel."

advance, what the outcome would be. I request this Court to closely examine the dates and order of document entries into CV-04-09193GAF. The out of order filings are attributed to District Judge Gary A. Feess withholding documents, and then **back-dating** and **doctoring the Docket** before and after the Clerk filed them to favor the City of Los Angeles. **For example**: Take notice of Docket #4, "**before**" filing for default and "**after**" being **doctored by the Court**, to favor Assistant City Attorney Robert Cramer, representing the City of Los Angeles. Especially being " *Modified on 12/16/2004 (lc,). (Entered: 11/23/2004).*"

(**Docket #4 Before**) as shown on the Pacer System:

12/10/2004

> **4** - "PROOF OF SERVICE Executed by plaintiff California State of, Miro J Satalich, United States of America, upon Los Angeles City of served on 11/12/2004, answer due 12/2/2004. The Summons and Complaint were served by federal express, accepted by receptionist L Jackson, by FRCP statute, upon City Attorneys office. Original Summons not returned. (lc,) (Entered: 11/23/2004)"

(**Docket #4 After**) as shown on the Pacer System:

12/18/2004

> 4 - "PROOF OF SERVICE Executed by plaintiff Miro J Satalich, upon Los Angeles City of served on 11/12/2004, answer due 12/2/2004. The Summons and Complaint were served by federal express, tracking log and original airbill accepted by receptionist L Jackson, by FRCP statute, upon City Attorneys office, Robert Cramer, assistant City Attorney. Original Summons not returned. (lc,) Modified on 12/16/2004 (lc,). (Entered: 11/23/2004)"

Then examine Docket #9, #10 and #11 of how Judge Feess refused to address a critical ruling request by the Appellant (pro se), **but did advise** (counsel), the Defendant how to escape in #9, then provided all of the tools to stall the case and allow the City to win. **All of the following** Docket Entries shown were on the Pacer System as of **12/18/2004**.

> **9** - "MINUTES (In Chambers) Court is in receipt of a document from pro se Plaintiff in this case entitled Plaintiff Requests Ruling from the Court, to determine whether Defendant was Properly Served [5]. Plaintiff is advised that the Court will not issue a advisory opinion on this matter. If Defendant wishes to bring a motion to dismiss pursuant to FRCP 4(m) for improper service, Court will address it at that time IT IS SO ORDERED by Judge Gary A. Feess Court Reporter: None Present. (ir,) (Entered: 12/15/2004)"
>
> **10** - "REQUEST for Entry of Default by Clerk against Defendant City of Los Angeles filed by Plaintiff Miro J Satalich. (ir,) (Entered: 12/16/2004)"
>
> **11** - "NOTICE OF DEFICIENCY Re: REQUEST for Entry of Default against Defendant City of Los Angeles [10]. The Clerk cannot enter the requested relief as proof of service did not indicated 1st name of Receptionist and that persons capacity to accept service of process for the City Attorney Officer/City of Los Angeles. Requesting party shall file a new Request/Application with noted

deficiencies corrected in order to have default reconsidered.(ir,) (Entered: 12/16/2004)"

IV.

"As an Appellate Judge presiding over a District Court case, and overseeing a Consent Decree, for more than 20 years, have an obligation to hear Appellant's Title 31 U.S.C. § 3730(h) Motion and Complaint for harassment, or was he obligated to pass it down to be heard by a lower Court?"

Taking dates from Judge Harry Pregerson's biography. The Appellant contends, that on November 2, 1979, when District Judge Harry Pregerson was elevated to the Appellate Court, he should have relinquished all district court cases, including CV-77-3047HP. However, Judge Pregerson hung onto CV-77-3047. Other than loose and unproven rhetoric, the Defendant City of Los Angeles, and/or District Court Judge Gary A. Feess provided no written proof or evidence, that Judge Harry Pregerson was indeed " **designate(d) and assign(ed) temporarily**" to oversee CV-77-3047HP.

Moreover, any finder of fact would easily conclude, that to oversee a case or "to hold a district court" on the aforementioned case for more than 20 years, could not be considered, by any stretch of the imagination, pursuant to Title 28 U.S.C. § 291 "**temporary duty**"?

Refer to Title 28 U.S.C. § 47, The legal question is raised: Would the same Appellate Judge oversee a case for more than 20 years have jurisdiction to hear third party challenges, such as my intervention, associated contractors, consultants or other interveners? The Appellant believes not. Based on historical notes in Title 28 U.S.C. § 47 (in part):

> "The provision in section 11-205 of the District of Columbia Code, 1940 ed., that a justice of the district court while on the bench of the Court of Appeals in the District of Columbia shall not sit in review of judgment, order, or decree rendered by him below, was consolidated with a similar provision of section 216 of title 28, U.S.C., 1940 ed. The consolidation simplifies the language without change of substance."

The Appellant believes, that the very language of 28 U.S.C. § 47 and it's historical notations clearly squares with this contention, that for an Appellate Judge to sit on a case for more than 20 years, as a district judge, directly conflicts with Title 28 U.S.C. § 291 and Appellate Judge Harry Pregerson's obvious silence to hear the Appellant's interventions. The Appellant begs questions of the Court:

Should Appellate Judge Harry Pregerson have had jurisdiction over CV-77-3047HP for more than 20 years? and; Should Judge Pregerson, instead of ignoring the interventions, have passed the case to a lower District Court to be heard?

The Appellant's material facts of Appellate Judge Harry Pregerson's intrajudicial and extrajudicial conflicts of interest, are as outlined below:

(1) Judge Harry Pregerson's biography shows he was once a City of Los Angeles Municipal Court Judge.

(2) **Refer to Appendix - I**. Letter from U.S. Congressman Steven T. Kukendall, relating to Judge Harry Pregerson's ex-Clerk **Felicia Marcus**. **In 1987**, Ms. Marcus left Judge Pregerson to represent ("Heal the Bay") that was a Plaintiff suing the City of Los Angeles in CV-77-3047HP. Then, **in a**

switch of hats, **In 1990**, Ms. Marcus was appointed by then, Mayor Tom Bradley, as a Commissioner to the City's Department of Public works, which was overseeing the ACD and reconstruction of the City's Hyperion, the main cause of CV-77-3047 action. **In another switch**, 1993, Ms. Marcus was appointed by then President Bill Clinton as Director to Region Nine, Environmental Protection Agency, (EPA) the governmental agency furnishing 2.5 billion to the City to reconstruct Hyperion. As noted in sworn testimony back in footnote[1], Ms. Marcus was the head of the EPA, and was also aware of the Appellant being harassed, **yet remained silent**.

(3) In case No.: CV-00-08882GAF(PlAx) Docket #34. On April 26, 2001, Judge Gary A. Feess STAYED CV-00-08882GAF citing: "PROCEEDINGS:

> "(In Chambers) The Court is in receipt of Plaintiff Satalich's Complaint, as well as the numerous Rule 12 Motions filed in response thereto. The Court notes that many of the allegations raised in Plaintiff's Complaint pertain to the Amended Consent Decree entered into in United States of America, et al. V. City of Los Angeles, CV 77-3047, which has been identified by the parties as a related case. The Court is undertaking an assessment of whether this case should be transferred to Judge Pregerson, who has presided over Consent Decree issues for more than 20 years. Until the this assessment is completed, the proceedings in this case are STAYED and the following hearing dates are VACATED: 1) Defendant Kiewit Pacific Co.'s Motion to Dismiss scheduled on May 7, 2001; 2) Defendant City of Los Angeles's Motion to Dismiss scheduled on

May 14, 2001; and 3) Metcalf & Eddy Service's Motion to Dismiss scheduled on May 21, 2001, until further notice from the Court. IT IS SO ORDERED."

It is not clear whether District Judge Feess contacted Appellate Judge Pregerson or vis-a-versa, however, the Appellant contends that pursuant to Title 28 U.S.C. § 47, Judge Harry Pregerson had no jurisdiction as an Appellate Justice, because of the relationship between CV-77-3047, and CV-00-08882. No mention was made in any of Judge Feess's transfer proposal of obtaining "**temporary**" approval from the 9th Circuit Chief Judge, or Chief Judge of the United States Supreme Court for such assignment, nor were there any hearings held to object to said transfer. The Appellant contends, that by the very nature of the case, Judge Feess's contact with Appellate Judge Harry Pregerson was inappropriate, that caused not only a hostile case environment, but future hostility in Appellate review. The Appellant believes, that by Judge Feess attempting to transfer CV-00-08882GAF to Appellate Judge Harry Pregerson was an intrajudicial conflict of interest. Further, because of the Appellant's objecting to said transfer, caused a hostile Court environment as clearly indicated within the Court Record and subsequent rulings from District Judge Gary A. Feess in CV-00-08882GAF and now, in CV-04-09193GAF.

(4) Also, in the record of CV-00-08882GAF Docket Entry #39, dated of entry: 05-03-2001, titled "**Open Letter To The Court**," pertaining to the Appellant voicing objections to case transfer to Appellate Judge Harry Pregerson, the significant importance of the objection was that it is believed Judge Pregerson had a month to examine all Court documents.

Many City officials were mentioned in the complaint, namely **James Hahn, who was the City of Los Angeles City Attorney, for most of the life of CV-77-3047HP**. The City Attorney, and his office were fully aware of the Appellant's fraud and harassment complaints filed with City departments, including the City's Ethics Commission and undeniably **James Hahn** himself. To further solidify conflict of interest allegations, on **July 3, 2001** Appellate Judge Harry Pregerson swore-in, newly elected City of Los Angeles Mayor **James Hahn**, then later attended a swearing-in function. A reasonable person has to wonder, of the **ease** the City had to contact Judge Pregerson to perform a swearing-in ceremony, yet Judge Pregerson turned a blind-eye and had no time for the Appellant's harassment interventions, and alleged City fraud **that he was supposedly overseeing**! **Clearly, prejudicial intrajudicial and extrajudicial conflicts of interests**. This Court will find it very difficult **not to tie** prejudicial rulings within CV-00-08882GAF and CV-04-9193(AF by Judge Gary A. Feess pertaining to Appellate Judge Harry Pregerson's intrajudicial and extrajudicial conflicts of interests with the Appellant's law suits against the City of Los Angeles and subsequent rulings thereof, as well as not recusing himself, hence **SCOTUS No.: 04-1420**, (**Appendix-H**).

(5) To show yet more extrajudicial conflict of interest, on or **about 1998**, a newly constructed office building within the City of Los Angeles's Hyperion **was named** after Appellate Judge Harry Pregerson, and still remains as such. Clearly, a conflict of interest with the City of Los Angeles and of rulings in CV-77-3047HP, and one more reason believed why Judge Pregerson closed the case on August 7, 2000.

Referring to all CV-04-09193GAF Docket Entries; The

Appellant is requesting this Court to carefully examine all Docket Entries, which clearly show that contrary to **FRCP Rule 79**, filed documents were intentionally withheld and filed out of order, to benefit the Defendant by Judge Gary A. Feess. **For example**: See **Docket Entry #31**, showing it was stamped, and received on time, 02/04/2005, however, purposely ignored, withheld, filed late, and out of order on 02/08/2005 by Judge Feess to benefit the Defendant.

See Appendix-C. Refer to Docket Entry #30, "Ruling on Motion to Dismiss." After carefully reading and analyzing Docket #30, a finder of fact would clearly determine that Judge Gary A. Feess **acted as counsel** for the defense. e.g.: See Docket Entry #9, and #31 (**Appendix-D**), Judge Feess declined to issue the pro se Appellant a clarification ruling, however, **advised** Robert Cramer, Assistant City attorney to file for dismissal. At that point in time of litigation, the requested ruling was critical to avoid unnecessary expense and case progression, yet ignored by Judge Feess.

Moreover, Appendix-D shows: . Docket #31 was withheld, and prejudicially ignored, then entered after his ruling of February 8, 2005 and not February 4, 2005, as of date received and attested to. In his dismissal ruling, Judge Feess used biased, prejudicial, abusive, debasing and demeaning language towards the Appellant such as: "**novel**," "**unusual**," "**absurd**," "**puzzling**" and **bizarre argument**." The Appellant is a natural born U.S. Citizen, that came into federal Court as a victim and for reasons of redress, and not to be verbally or judicially abused as has occurred in CV-00-08882GAF and unnecessarily in CV-04-9193GAF by Judge Gary A. Feess.

CONCLUSION
V.

In the March 19, 1999 attempt to intervene into CV-77-3047HP, the Appellant contends several elements of **fact** and **law**. **First**, in the clear language of the FRCP, [4] all parties were properly served and asserts the City was obligated to respond, and/or defend, and/or object to the intervention, but **did nothing**. **Second**, the Appellant asserts, pursuant to Title 28 U.S.C. §§ 47, and 291(b), Appellate Judge Harry Pregerson, for more than 20 years **was out his jurisdiction** to sit and rule on CV-77-3047, let alone to rule on the Appellant's interventions. Moreover, the Court Record and material evidence submitted, show that Appellate Judge Harry Pregerson was not only in a conflict of interest to protect the City, but because being out of his jurisdiction, purposely ignored the Appellant's filings, **twice**.

In CV-04-09198GAF "**Show Cause**," the Defendant, City of Los Angeles was **properly served twice** with a summons and complaint. **In the first serving**, (Docket Entry #4) was served on "11/12/2004, answer due 12/2/2004," The City claimed to have not been properly served, yet, **were illegally permitted** to respond on (see Docket Entry # 12) 12/21/2004 with the term, "**Special Appearance**," which is, **no where to be found** in the FRCP, and yet, allowed by Judge Feess. The Appellant contends, that when the City responded with their "**Special Appearance**," the City acknowledged service, and were clearly pursuant to FRCP rule 55, **in default**.

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[4] According to the plain meaning rule, words must be given their plain, ordinary and literal meaning. If the words are clear, they must be applied, even though the intention of the legislator may have been different or the result is harsh or undesirable.

The City could have very well made a **regular "Appearance"** on the due date, **but did not**. **In the second serving** the Court acknowledged the City being late, then ruled for dismissal. As Dr. Heckman stated, it won't matter anyway, because if your pro se, under all circumstances, your destined to lose.

PRAYER
VI.

The Appellant prays that the high Court hears this case and rules to make him whole. To remand, and order the lower Court **to not set aside,** for any reason, and to award **default** and **default judgment**, that containing **all elements of Title 31 U.S.C. § 3730(h)** and **special damages**, including **court costs**, and **reasonable attorney fees** to the Appellant for the amount pled for on **4/24/01** in CV-77-3047HP, and again on 12/14/2004, (Docket #10) in CV-04-9193GAF, as well as, **accrued interest from 4/24/01 to 12/14/2004**.

Respectfully submitted by,

_____ Date: November 28, 2005

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APPENDIX - A

FILED
SEP 23 2005
CATHY A. CATTERSON CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA; et al., No. 05-55483

Plaintiffs, D.C. No. CV-04-09193-GAF

and MEMORANDUM *

MIRO J. SATALICH, ex rel.,
Plaintiff - Appellant,
v.

CITY OF LOS ANGELES,
Defendant - Appellee.

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted September 12, 2005**
Before: REINHARDT, RYMER, and HAWKINS,
Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for

decision without oral argument. See Fed. R. App. P. 34(a)(2).

Miro J. Satalich appeals pro se the district court's dismissal of his action under the False Claims Act, in which he sought a default judgment against the City of Los Angeles ("the City"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, and we may affirm on any ground supported by the record. Vestar Dev. II, LLC v. Gen. Dynamics Corp., 249 F.3d 958,960 (9th Cir. 2001). Satalich's action is premised on his claim that he was entitled in 1999 to intervene in United States of America v. City of Los Angeles, USDC No. 77-3047-HP (C.D. Ca1.), an action the United States filed in 1977 against the City regarding its discharge of wastewater into Santa Monica Bay. That action resulted in an amended consent decree in 1987, and was closed in 2000, without a ruling on Satalich's motion to intervene. Nothing in the record before us indicates that Satalich ever asserted, let alone established, the basis for his right to intervene in the underlying litigation. See United States v. Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2004) (discussing requirements for intervention as of right); Hook v. State of Ariz., Dep't. ofCorr., 972 F.2d 1012, 1014-15 (9th Cir. 1992) (discussing requirements for standing to enforce a consent decree). For this reason, and those set forth in the district court's February 7,2005 order, we conclude the court properly dismissed the action with prejudice.

,.... Satalich's remaining contentions also lack merit.
AFFIRMED.

APPENDIX - B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA; et al., No. 05-55483
Plaintiffs, D.C. No. CV-04-09193-GAF
and
MIRO 1. SATALICH, ex rel., **JUDGMENT**
Plaintiff - Appellant,
v.
CITY OF LOS ANGELES
Defendant - Appellee.

Appeal from the United States District Court for the Central District of California, Los Angeles. This cause came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is,

AFFIRMED.

Filed and entered 09/23/05

A TRUE COPY
CATHY CATTHERSON
Clerk of the Court
ATTEST
9th Circuit Court Seal
OCT 21 2005
by Ruben Talavera
Deputy Clerk

APPENDIX - C

P Send
Link to: 22

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 04.9193-GAF (PLAx) Date: February 7, 2005
Title: United States ex rel. Satalich v. City of Los Angeles

The Honorable Gary Allen Feess. Judge

Marilynn Morris — Courtroom Deputy Clerk
None Present — Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None Present
ATTORNEYS PRESENT FOR DEFENDANTS:
None Present

PROCEEDINGS: (In Chambers)

RULING ON MOTION TO DISMISS

DOCKETED ON CM
FEB - 8 2005
BY Initial/ 007

A. BACKGROUND

In 1977. the United States sued the City of Los Angeles relating to the disch wastewater into Santa Monica Bay. United States v. City of Los Angeles, CV 77-3047-HP(the "Santa Monica Bay Action"). The suit was assigned to then District Judge Harry Pregerson, who continued to preside over the suit as a district court judge after his 1979 appointment to the Ninth Circuit Court of Appeal.

In 1987 the parties settled the suit through a consent decree that required the redesign and reconstruction of a substantial portion of the City's Hyperion Wastewater

Treatment Plant, the largest treatment plant west of the Mississippi River. As of late 1998, the City had substantially completed the upgrade and had fulfilled the terms of the consent decree.[1] During the ten-year period of reconstruction, Judge Pregerson continued his supervision of the project until August 7, 2000, when the case was closed.

In March 1999; about 22 years after the suit was filed, pro se Plaintiff Miro Satalich ("Satalich") filed a motion to permit him to file a complaint in intervention in that case. With that motion pending, Judge Pregerson ordered the case closed (Pet. Ex. 1, at 3, Docket No. 328), thus denying, sub

30

MINUTES FORM 11
CIVIL-GEN Initials of Courtroom Deputy Clerk I/___

silentio, the motion to intervene. Satalich has now brought the pending lawsuit in which he asks this Court to reopen the 1977 case and issue an order to show cause why the City, which never tj answered a complaint that was never ordered filed by Judge Pregerson, should not be adjudge default. The City now moves to dismiss.

B. DISCUSSION

1. The Standard

A motion to dismiss a complaint tests the legal sufficiency of the claims asserted. Fed. R. Civ. P. 12(b)(6). Dismissal pursuant to Rule 12)(6) is proper where there is

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[1] The background information regarding the Santa Monica Bay Action is taken from the City's memorandum in support of its motion to dismiss. (Mot. at 1-2). It is used solely to provide a narrative context for the facts alleged In Satalich's Petition, and bears no weight in the Court's ruling.

either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't 901 F2d 696. 699 (9th Cir. 1988). In making that determination, the Court accepts all factual allegations pleaded in the complaint as true: in addition, it construes those facts and draws all reasonable inferences from them in favor of the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,337-38 (9th Cir. 1996). In ruling on a motion to dismiss, a court may also rely on documents presented as part of the complaint, or on matters that .are properly subject to judicial notice. See Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 (9th Cir. 1989); Branch v. Tunnell. 14 F.3d 449, 453-54 (9th Cir. 1994); MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986).

2. The Complaint in Intervention

The present complaint presents the Court with the novel theory that Satalich should be permitted to seek a default judgment on a complaint in intervention that was never ordered filed with the court and therefore never properly selved on the allegedly defaulting party. Why should the Court take such action? Satalich offers no pertinent authority, but does present several unusual arguments.

First, Satalich contends that Judge Pregerson, .as an appellate court judge had no jurisdiction over the action under 28 U.S.C. § 47, and since he had no jurisdiction he could not have denied Satalich's motion to intervene. Section 47 provides: No judge shall hear or determine an appeal from the decision of a case or issue tried by him: 28 U.S.C. § 47. Plainly it has no application in this case. See United States v. Zarowitz. 326 F. Supp. 90, 92 (C.D. Cal. 1971). Moreover, as the City notes, 28 U.S.C. § 291 (b) specifically authorized Judge Pregerson's continued service as a district court judge in

the Environmental Action, even after he was appointed to the Ninth Circuit. Because the statute speaks of -temporary" assignments. Satalich contends that the statute is not applicable because Judge Pregerson's assignment was "permanent." However, the United States Supreme Court, in Johnson v. Manhattan R. Co- 289 U.S. 479 (1933), held that § 291(b) authorizes "[a]ssignments to hear particular cases: Id. at 500 (emphasis added). Accordingly, Satalich's argument that Judge Pregerson's assignment to hear the Environmental Action violated § 291 (b) because it lasted for the life of a particular case is without merit.

Second, Satalich contends that Judge Pregerson was disqualified by a conflict of interest because he sat as a Municipal Court judge from 1965 to 1966, and he swore in Mayor James Hahn in 2001. In other words, based on his employment more than a decade before the Santa Monica Bay Action was filed, and an event that occurred after that suit was closed, Satalich finds a conflict of interest. This argument also clearfy lacks merit.

The grounds for disqualification of federal judges are controlled by two statutes: 28 U,S.C. § 144 and § 455. 'Section 144 provides:

Whenever a party to a proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against or in favor of any adverse party, such judge shall proceed no further therein but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists. . . . A party may file only one such affidavit in any case.

28 U.S.C. § 144. Section 455 "requires a judge to recuse

himself in any case in which his impartiality might reasonably be questioned.

A motion to recuse under either statute must be timely. See Lilieberg v. Health Servs. Acquisition Com., 486 U.S. 847 (1988) (noting that "a 10-month delay would normally foreclose vacatur based on a § 455(a) violation"); Polizzi v. United States, 926 F.2d 1311, 1321 (2d Cir. 1991) (holding that defen~ant "waived the claim that [the judge] should have recused himself when he failed to timely move for such recusal pursuant to 28 U.S.C. § 144 or 28 U.S.C. § 455"). Making such a motion more than four years after the suit terminated fails to satisfy the timeliness requirement. Moreover, the motion fails to meet any of the substantive requirements necessary to establish a ground for recusal.

The standard for recusal is the same under both sections: "'Whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" United States v. Hernandez, 109 F.3d 1450, 1453-54 (9th Cir. 1997) (per curiam) (quoting United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986)). The facts to which Satalich points fall far short of meeting this standard.

Satalich first asserts that Judge Pregerson should have been disqualified from hearing a case against the City because he was a Los Angeles Municipal Court judge from 1965 to 1966. (Pet. at 5; Ex. 2). Satalich's reasoning leads to absurd results. Under Satalich's theory, no federal judge could hear a case against the United States because he sits on the federal bench nor could any state court judge hear a case against the state because she sits off the state bench. No reasonable person would question Judge Pregerson's ability to impartially resolve a dispute against the City merely because he was a Municipal

Court judge a decade before the Santa Cf. United States v. Alabama, 828 F.2d 1532; 1543 (11th Cir. 1987) ("It is well settled that the facts pleaded. . . will not suffice to show the personal bias required by the statute if they go to the background and associations of the judge rather than to his appraisal of a party personally.").

Satalich also alleges-a conflict of interest based on the fact that Judge Pregerson "personally met with City officials outside the Court room" on July 3, 2001, almost a year after the Santa Monica Bay Action was closed. (Pet. at 5). In support of this allegation, Satalich directs the Court to Exhibit 3 of his Petition, which is a newspaper report of the swearing in of the newly-elected Mayor James Hahn. (Pet. Ex. 3). The report recounts that Hahn was "administered the oath of office by U.S. Circuit Judge Harry Pregerson." (Id.). Thus, Satalich makes the puzzling claim that a reasonable person would question Judge Pregerson's ability to impartially judge the Santa Monica Bay Action because after the litigation ended, Judge Pregerson acted in his official capacity at a public ceremony to swear in one the City's public officials. This bizarre argument fails to support any inference that Judge Pregerson exhibited bias toward either side during the course of the earliar litigation.

3. The Alleged Default in the Present Action

In his opposition, Satalich also argues that the City has failed to timely respond to the present suit and therefore he is entitled to an entry of default, which would cut off the City's right to appear and defend this action. (Opp. at 3); see William W Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial ("Schwarzer") § 6:42 (2004) ("Entry of a defendant's default cuts of his or her right to appear in the action or present evidence") (citing Clifton v. Tomb, 21 F.2d 893, 897 (4th Cir. 1927); Cohen v. Murohv, 2004 U;S. Dist.

LEXIS 25284,1-2 (N.D. Cal. 2004) (same).

Default may be entered by the Clerk if the defendant has "failed to plead or otherwise defend" within the permitted time. Fed. R. Civ. P.55. However, it is well established that "filing of a motion to dismiss fall[s] squarely within the ambit of the phrase otherwise defend and prevents the entry of default. In re Sumitomo Copper Litig., 204 F.R.D. 58, 61 (S.D.N.Y. 2001); see also Ashby v. McKenna, 331 F.3d 1148, 1152 (10th Cir. 2003) (holding that plaintiffs request for entry of default was properly denied where request was made' while motion to dismiss was pending): Wickstrom v. Ebert, 101 F.R.D. 26, 33 (E.D. Wis. 1984) (tilt is undisputed that motions challenging a complaint for failure to state a claim upon which relief can be granted, fall squarely within the ambit of the phrase 'otherwise defend.'") Even a late-filed motion to dismiss prevents entry of a default. See Mitchell v. Brown & Williamson Tobacco COrD., 294 F.3d 1309, 1317 (11th Cir. 2002) (refusing default entry where motion to dismiss filed short time after deadline for responsive pleading).

Here, Satalich has twice requested the Clerk to enter default against the City. On December 14,2004, Satalich first requested that the Court Clerk enter default against the City on the basis that the City had failed to respond timely to his Petition, which was served on the City Attorney's Office.[2]

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[2] On November 12, 2004, Satalich served his Petition on the City Attomey's Office. (Id. Docket No.4). After receiving the Petition, the City Attorney's Office advised Satalich by letter that it was not authorized to accept service of process on the City's behalf, and that "[i]n order to compel the City of Los Angeles to respond to your petition, you will need to serve the City. . . through the Office of the City Clerk." (Id, Docket No. 12, City's Special Appearance Ex. 1). In response to the City's letter. Satalich requested a ruling from the Court as to whether the City was

(CV-04-9193 Docket No. 10). The Clerk rejected Satalich's request, noting that his proof of service was lacking required information. (Id. Docket No. 11). Specifically, the proof of service did not indicate the first name of the person served or that person's capacity to accept service of process for the City. (Id.). The notice advised Satalich to file a "new Request/Application with noted deficiencies corrected in order to have default reconsidered." (Id.). [3]

On December 20, 2004, Satalich re-served his Petition on a Deputy City Clerk, who was expressly authorized to accept service on behalf of the City. (Id. Docket No. 17). The docket indicates the City's response was due January 9, 2005. (Id.). On January 11, 2005, the City filed the instant motion to dismiss, twenty-two days after service.[4] On January 18, 2005, Satalich once again filed a request for entry of default (Id,

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properly served. (Id, Docket No.5). The Court advised Satalich by minute order that it would not issue an advisory opinion.. (Id, Docket No. 9). The order also advised that if the Defendant brought a motion to dismiss for improper service, the Court would address the issue at that time. (Id.).

[3] To obtain entry of default, a plaintiff "must present proof to the court clerk (by affidavit or declaration) that the defendant is in default'– i.e., that defendant has been served with summons and complaint. . . and has failed to respond with the time permitted by the Federal Rules." Schwarzer § 6:36 (emphasis added). Here, the Clerk determined that Satalich's proof of service on the City was inadequate

[4] The City was required to serve rtS respoosive pleading by Sunday. January 9, 2005 under Fed. R. Civ. P. 12(a)(1)(A). However, because the last day to serve was a Sunday, the City had until Monday, January 1o to complete service under Fed. R. Civ. P. 6(a). The City asserts it timely served Satalich by mail on January 10th and January 11th. However, the proof of service attached to the Court copy of the opposition indicates only that the document was served on January 11th.

Docket No. 23). The Clerk rejected the request, noting that a motion to dismiss was pending. (Id, Docket No. 24).

The Clerk properly denied Satalich's request. When the City filed its motion to dismiss on January 11, 2005, no default had yet been entered.[5] Schwarzer § 6:3 (""If no default has yet been 'entered,' the clerk must accept for filing defendant's pleadings or motions although they are filed late. Once they are filed, it is too late for entry of default.") (emphasis added). When Satalich filed his second request for entry of default on January 18th, the City's motion was already pending. Thus, Satalich is not entitled to an entry of default in response to his January 18th request because the City had, by January 18th, already filed a motion to dismiss - even if it was one day late. See Ashby. 331 F.3d at 1152 (stating that vacating the Clerk's denial of request for entry of default while motion to dismiss was still pending would have been an abuse of discretion); see also Mitchell, 294 F.3d at 1317 (refusing entry of default even though motion to dismiss was filed after deadline for responsive pleading). Accordingly, Fed. R. Civ. P. 55 does not apply to prevent the City from defending the instant case.

C. CONCLUSION

The motion to dismiss is **GRANTED WITHOUT LEAVE TO AMEND**. The pending suit is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

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[5] As noted above, the Clerk had rejected Satalich's December 14, 2004 request for entry of default due to deficiencies in proof of service (Docket No. 11). which Satalich did not seek to correct until January 18, 2005 – after the motion to dismiss had already been filed.

APPENDIX - D

Miro J. Satalich
P.O. Box 93314
Phoenix, Arizona 85070 -93314
(480) 283-0355
Pro se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE UNITED STATES OF AMERICA, and;
THE STATE OF CALIFORNIA, and;
ex rel. MIRO J. SATALICH
Plaintiffs, Petitioner,
vs. CASE No. CV-04-9193-GAF(PLAx)
THE CITY OF LOS ANGELES,
Defendant.

RESPONSE AND REBUTTAL TO CITY OF LOS ANGELES'S MOTION TO DISMISS DOCUMENT DATED: JANUARY 31, 2005 REINFORCEMENT FOR DEFAULT JUDGEMENT

Hearing date: February 7, 2005
Time: 9:30 A.M.
Place: Roybal
Courtroom: 740
Judge: Honorable Gary A. Feess

#31

DUPLICATE

RESPONSE AND REBUTTAL TO CITY'S MOTION TO DISMISS DATED: JANUARY 31, 2005

(1) **Refer to Defendant's pleading dated January 31, 2005**, page 1, line 1, ¶1. The Defendant cited Fed.R.Civ.P.12(b)(6), which is: "***failure to state a claim upon which relief can be granted***", which is absolutely nonsense. It must be remembered, that this action is a "**Noticed Show Cause**." The claim is awarding "**default judgement**" nonetheless, the Plaintiff's claim was clearly spelled out throughout all documents filed as a violation of Title 31 U.S.C. § 3730(h). As required by FRCP, Rule 55, affixed to all pleadings, and evidence submitted on **4/24/2001** into **CV-77-3047HP, Docket Entry #333**, was a notarized "**Declaration and Sworn Affidavit**." Dated: **April 21, 2001**. No other document(s) should be required.

> (2) **The Defendant also cited FRCP - "Local Rule 7-12."**
>
> "The failure to file a timely opposition may be deemed a consent to granting of the City's motion under Local Rule 7-12."

Refer again to **Docket Entry #22**, and/or **Defendant's pleading dated January 31, 2005, page 3, line 7, paragraph 5**. According to **Docket Entry #22**, and by the City's own admission is, in default. Therefore, pursuant to **"FEDERAL RULES OF CIVIL PROCEDURE, II. Commencement of Action; Service of Process, Pleadings, Motions and Orders, Rule 5-- Service and Filing of Pleadings and Other Papers" (a), Service: Due to the admission by the Defendant of being in "Default,"** the Plaintiff asserts pursuant to **FRCP, Rule 5(a)** was under no obligation to answer to Defendant's pleading of **January 11, 2005,** filed as **Docket Entry #22**, nor should he be penalized for responding, or not responding to same. The Plaintiff further asserts that, by the Defendant admitting to

filing late, and then filing a "**Motion to Dismiss**" should have **no standing to cite FRCP, L.R. 7-9, or L.R. 7-12** onto the Plaintiff, because **FRCP Rule 5(a)** should trump **L.R. 7-9, or L.R. 7-12**.

REINFORCEMENT OF PLAINTIFF'S CLAIM OF SHOW CAUSE OF WHY DEFAULT SHOULD NOT BE AWARDED TO PLAINTIFF USING THE CITY'S THEORY OF FRCP, LOCAL RULE 7-9, 7-12,

(3) The City of Los Angeles can't have it both ways. Refer again to Defendant's Document dated **January 31, 2005**, page 1, ¶1. Reversing the City's theory of Plaintiff's ***failure to file a timely opposition may be deemed a consent to granting of the City's motion under local Rule 7-12***," would also have to **first** apply to the City for not responding to the Plaintiff's "Intervention Motion" filed on **March 19, 1999**. Meanwhile, using the City's theory, the Plaintiff contends that in accordance with **FRCP, L.R. 7-9, and 7-12**, when the City failed to respond to, or file an objection thereto, to the Plaintiff's **March 19, 1999** "**Motion**" to "**Intervene**," the City automatically fell into FRCP, Rule 55, Default. Following this further, any Federal Judge, District or Appellate, would have to rule "**default judgement**" in favor of the Plaintiff.

(4) In light of the given evidentiary facts by the Plaintiff and admissions by the Defendant, City of Los Angeles, the Plaintiff believes the Court can only rule this show cause one way, that being to enter **default judgement**.
Respectfully submitted by:

s/_____, Date: February 3, 2005

Miro J. Satalich P.O. Box 93314
Phoenix, Arizona 85070 - 93314
Tel: 480 283-0355

APPENDIX - E

DOCKET NO.: 77-3047HP, as obtained from:
National Archives and Records Administration
Office of Regional Records Services - Pacific Region
Attn: Trust Fund Unit
24000 Avila Road, 1st Floor, East Entrance
Laguna Niguel, California 92677-3497.

(In part)

Page 1 of 15 Pages

0973 2 | 77 | 3047 | 8 | 12 | 77 | 1| 893 | 1| 7316| 77|3047R

United States of America | | City of Los Angeles

Court use only	
United States district Court	
Central District of California	
Archive Location	
File Case No.:	CV 77-3047
Accession No.:	21910023
FRC Location:	4519358
Agency Box No.:	5/7 Fld 18 cause

Complt for Injunctive relief

Civil Docket Continuation Sheet

Plaintiff	Defendant	CV Docket No.: 77-3037HP Page 14 of _____Pages

Date	NR.	Proceedings
(Note, only last entries from 321 to 333 are shown)		
3/19/99	al	321. Mot for complt in intervention. Intervenor, pltf Miro J. Satalich in Pro per. Lodged prop Complt in Intervention. 322. P/S of Mot for Complt Intervention and Complt in intervention for clm of harassment, threats and discrim by mail (see doc for attached svc list) on 3/19/99.

(See pg 15)

Civil Docket Continuation Sheet

Plaintiff	Defendant	CV Docket No.: 77-3037HP Page 15 of _____Pages

Date	**NR.**	**Proceedings**
3/29/99	al	**323.** Rpt on stat of pretreatment clms agnst remaining dfts. Pltfs
4/)/99	al	**324.** P/S of Mot for comp intervention & cmp in intervention for

		clm of harassment, threats & discrim srvd by mail to dept of Justice, Janet Reno, Ofc of Regional Cnsl, Hugh Barroll, Atty, State of CA, Bill Lockyer, Atty Gen., State of CA Atty Gen Office, Bill Lockyer, & City of L.A. c/o City Clerk on 3/19/99.
6/25/99	al	**325.** Amd consent decree qtrly update rpt, April 1, 1999 subm by dfts, City of L.A.
12/30/99	al	**326.** Ntc of lodging of consent decree, Modification to amd consent decree– City of L.A. & consent decree– City of Burbank. Pltfs
*** 8/7/00**	lk	**327.** Modification to amend consent decree by Judge Harry Pregerson. The Crt shall retain jurisd to enforce the terms and conditions of this Consent Decree. (ENT 8/7/00) MD-JS-6 mld cpys
*** 8/7/00**	lk	**328.** Consent Decree – City of Burbank by Judge Harry Pregerson. The Crt shall retain jurisd to enforce the terms and conditions of this Consent Decree. (ENT 8/7/00) MD-JS mld cpys
5/23/00	lpc	**329.** Status Report – USA
7/21/00	lpc	**330.** Status Report – USA

8/7/00	lpc *	**331.** Amd Ntc to the Crt and request for Entry of Consent Decree by Pla USA.
8/14/00	lk	**332.** Ntc of discrepancy that Mot for Cmp-In-Intervention ldg on 8/7/00 is not to filed but rejected and returned to cnsl by Richard Janisch, Manager (case closed on 8/7/00).
9/8/00	lc	**333.** Ntc of discrepancy mot fr complt in intvn (und seal) w/cmp in intvn by Miro J. Satalich; case closed 8/7/00, orig mot fr intvn rejected 8/14/00 NOT BE FLD, but REJECTED by R. Janisch, mgr.
4/24/01	lc	DOCUMENT RECEIVED & RETURNED: Reg Y P/A re dflt agsnt county of Los Angeles on Satalich cmp in intervention; cmp in intervention was rejected on 9/8/00, case being closed as of 8/7/00

APPENDIX - F

UNITED STATES, DISTRICT COURT CENTRAL
DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8
Los Angeles, CA 90013
213-894-4445
Fax 213-894-4422

SHERRI R. CARTER
District Court Executive
and
Clerk of Court

SOUTHERN DIVISION
411 West Fourth Street
Suite 1053
Santa Ana. CA 92701-4516
714-338-4750

Septemher15, 2000

EASTERN DIVISION
4100 Main Street. Rm. 137-A
Riverside. CA 92501
909-276-6170

Mr. Miro 1. Satalich
4125 Lorraine
Road Rancho Palos Verdes-,CA 90275

Dear Mr. Satalich:

A review of the docket entries posted in Civil Case 77-3047-HP United States of America vs. City of Los Angeles, which was closed on August 7, 2000, indicates that your motion for complaint in intervention filed on March 19, 1999, and the lodged proposed complaint in intervention is still pending. The Clerk"s Office was able locate your original motion for complaint in intervention filed on March 19, 1999,. but not the lodged complaint in intervention. Please provide me with a. duplicate original of your proposed complaint in intervention for Judge Pregerson's review and determination. If you have any question, please call me at (213) 894.3651. Very truly yours,

S/_____
Richard F. Janisch
Manager of Court Operations

APPENDIX - G

TIME LINE for CV-77-3047-HP, and
CV-00-08882GAF, and CV-04-9193GAF)PLAx)

Date: 07-14-1998
Case No.: CV-77-3047HP
Docket No.: NA
Document: Obtained civil copy of Docket from the National Archives, Laguna Niguel, CA
Archive Location
File Case No.: CV 77-3047
Accession No.: 21910023
FRC Location: 4519358
Agency Box No.: 5/7 Fld 18 cause

Date: 03-19-1999
Case No.: CV-77-3047HP
Docket No.: **321**
Document: Filed Motion for Complaint in Intervention into CV-77-3047HP.

Date: 03-19-1999
Case No.: CV-77-3047HP
Docket No.: **321**
Document: Filed Complaint in Intervention for Claim, Threats, and Discrimination into CV-77-3047HP.

Date: 03-19-1999
Case No.: CV-77-3047HP
Docket No.: **322**
Document: Filed Proof of Service for 03-19-1999 filings.

Date: 04-09-1999
Case No.: CV-77-3047HP
Docket No.: **324**

Document: Filed Proof of Service for all parties served on 03-19-1999 filings.

Date: 09-29-1999
Case No.: CV-77-3047HP
Docket No.: NA
Document: Letter of status inquiry to USDC, Correspondence Clerk for 03-18-1999 filings.

Date: 10-06-1999
Case No.: CV-77-3047HP
Docket No.: NA
Document: Letter and check for $15.00 to USDC-CDCA Corr. Clerk for status report info on 03-19-1999 filings.

Date: 01-05-2000
Case No.: CV-77-3047HP
Docket No.: NA
Document: Letter to Michael Hertz, USDOJ requesting status report of 03-19-1999 filings.

Date: 03-29-2000
Case No.: CV-77-3047HP
Docket No.: NA
Document: Letter to Appellate Judge Harry Pregerson, inquiry to status of 03-19-1999 filings.

Date: 03-29-2000
Case No.: CV-77-3047HP
Docket No.: NA
Document: Proof of mailing to Judge Pregerson on 03-29-2000

Date: 03-29-2000
Case No.: CV-77-3047HP

Docket No.: **329**
Document: First status report to the court from the USDOJ for investigation of 03-19-1999 filings.

Date: 07-21-2000
Case No.: CV-77-3047HP
Docket No.: **330**
Document: Second status report to the court from the USDOJ for investigation of 03-19-1999 filings.

Date: 07-31-2000
Case No.: CV-77-3047HP
Docket No.: **NA**
Document: Letter from US Congressman Steven Kuykendall regarding bio info on Ms. Felicia Marcus.

Date: 08-07-2000
Case No.: CV-77-3047HP
Docket No.: **332**
Document: Checked w/Court Clerk. CV-77-3047HP was still open. Filed Motion for Complaint in Intervention .

Date: 08-07-2000
Case No.: CV-77-3047HP
Docket No.: **333**
Document: Checked w/Court Clerk, CV-77-3047HP was still open. Filed under seal, full qui tam Motion and Complaint in Intervention into CV-77-3047HP.

Date: 08-14-2000
Case No.: CV-77-3047HP
Docket No.: See **333**
Document: Notice of Document Discrepancies, stating CV-77-3047HP was closed on August 7, 2000, by Appellate Judge Harry Pregerson.

Date: **08-22-2000**
Case No.: CV-00-08882GAF
Docket No.: 1
Document: Filed new case USA, State of California, and ex rel. Miro J. Satalich Case No.: CV-00-8882-GAF (Under Seal)

Date: **09-08-2000**
Case No.: CV-77-3047HP
Docket No.: **333**
Document: Notice of Document Discrepancies stating CV-77-3047HP was closed on August 7, 2000.

Date: **09-15-2000**
Case No.: CV-77-3047HP
Docket No.: NA
Document: Letter from Richard Janisch, Manager of Court Operations stating(in part): "A review of the docket entries posted on Civil Case 77-3047-HP United States of America v. City of Los Angeles, which was closed on August 7, 2000, indicates that your motion for complaint in intervention filed on March 19, 1999, and the lodged complaint is still pending." "The Clerk's Office was able to locate your original motion in intervention filed on March 19, 1999, but not the lodged proposed complaint in intervention." "Please provide me with a duplicate original of proposed complaint in intervention for Judge Pregerson's review and determination." Signed, Richard F. Janisch , Court Manager.

Date: 04-21-2001
Case No.: CV-77-3047HP
Docket No.: **Last Entry**
Document: Notice of Request Entry of Default Judgment, Notarized

Date: 04-23-2001
Case No.: CV-77-3047HP
Docket No.: **Last Entry**
Document: Filed: Notice of Request of Entry for "Default Judgment" Against the Defendant City of Los Angeles, Memorandum of Points of Authority and Affidavit Thereof - With Accompanied Evidentiary List.

Date: **04-23-2001**
Case No.: CV-77-3047HP
Docket No.: **Last Entry**
Document: Filed: Notice of Request of Entry for "Default Judgment" Against the Defendant City of Los Angeles, Evidentiary List Exhibits- "A" to Exhibits-"N"

Date: **05-15-2001**
Case No.: CV-00-08882GAF
Docket No.: **42**
Document: Notice of Court rejecting Plaintiff's Summary Judgment.

Date: **05-24-2001**
Case No.: CV-00-08882GAF
Docket No.: **43**
Document: District Judge Gary A. Feess attempted to transfer CV-00-8882GAF to Appellate Judge Harry Pregerson.

Date: **07-03-2001**
Case No.: CV-04-9193GAF
Docket No.: Show Cause
Document: News Paper Torrance Daily Breeze, Judge H. Pregerson swearing in new Mayor of City of Los Angeles James Hahn.

Date: **06-04-2004**
Case No.: CV-77-3047HP
Docket No.: **Entire Civil Docket**
Document: Obtained updated Civil Docket from National Archives, Laguna Niguel.

Date: **06-05-2004**
Case No.: CV-77-3047HP
Docket No.: NA
Document: Obtained Bio, Appellate Judge Harry Pregerson.

Date: **11-08-2004**
Case No.: CV-04-9193GAF
Docket No.: **1**
Document: Filed "Noticed Show Cause" of why "Default Judgement" should not be awarded to Plaintiff" for failure of Defendant to plead in CV-77-3047HP, March 19, 1999 filing

Date: **03-01-2005**
Case No.: CV-04-9193GAF
Docket No.: **1 thru 33**
Document: Civil Docket CV-04-9193-GAF

Date: **02-07-2005**
Case No.: CV-04-9193GAF
Docket No.: **30**
Document: Civil Minute Order, Ruling on Motion to Dismiss-"The motion to dismiss is GRANTED WITHOUT

LEAVE TO AMEND, The Pending suit DISMISSED WITH PREJUDICE."

APPENDIX - H

No. 04-1420
Title: Miro J. Satalich, Petitioner
v.
City of Los Angeles, California
Docketed: April 25, 2005
Lower Ct: United States Court of Appeals for the Ninth Circuit Case Nos.: (04-56758)
Decision Date: November 23, 2004
Rehearing Denied: December 29, 2004

Date	Proceedings and Orders
Feb 28 2005	Petition for a writ of certiorari filed. (Response due May 25, 2005)
Feb 28 2005	Supplemental Appendix of Miro Satalich filed.
May 12 2005	Waiver of right of respondent City of Los Angeles, California to respond filed.
May 24 2005	DISTRIBUTED for Conference of June 9, 2005.
Jun 13 2005	Petition DENIED.

Name	Address	Phone
Attorneys for Petitioner:		
Miro J. Satalich	P.O. Box 93314 Phoenix, AZ 85070-93314	(480) 283-0355
Party name: Miro Satalich		
Attorneys for Respondent:		
Robert Cramer	Los Angeles City Attorney 200 No. Main Street, Room 900 Los Angeles, CA 90012	(213) 473-6858
Party name: City of Los Angeles, California		

APPENDIX - I

Congressional Seal

Congress of the United States
House of Representatives

Steven T. Kuykendall
36th District, California
512 Cannon House Office Building
Washington, DC 20515-0536
(202) 225-8220
Fax: (202) 225-7119

Committees
Etc.

July 31, 2000

Mr. Miro Jack Satalich
4125 Lorraine Road
Rancho Palos Verdes, California 90275

Dear Mr. Satalich:

Thank you for contacting me about the appointment of Ms. Felicia Marcus. I appreciate hearing from you and apologize for the delay in responding. The United States Environmental Protection Agency divides the country into ten regions, appointing a regional administrator to oversee environmental policy decisions for each region. The regional administrator is appointed by the president and serves for a time subject to each presidential administration. California is covered by Region Nine, which is overseen by Felicia Marcus. Ms. Marcus was appointed by President Clinton in 1993 and confirmed by the U.S. Senate. Before her appointment, Ms. Marcus, was the president of the Board of Public Works for the city of Los Angeles. For further information regarding Ms. Marcus' career, I have enclosed a copy of her resume for your review. r Once again, thank you for your comments. Please do not hesitate to contact me if you have other comments or questions.

Sincerely,

S/_____
STEVEN T. KUYKENDALL
Member of Congress
STK:mf
Enclosure

Felicia Marcus

Felicia Marcus has served as regional administrator of U.S. Environmental Protection Agency (EPA) Region 9 since 1993. The office addresses environmental problems in California, Arizona, Nevada, Hawaii, the Republic of Palau, the Federated States of Micronesia. the Republic of the Marshall Islands, the territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands, as well as those on the lands of federally recognized Indian tribes. During her tenure at EPA, Ms. Marcus has focused on establishing greater accessibility and working relationships between EPA and the public it serves - sovereign Indian nations and former territories, environmental and community groups, state and local governments, and business and agricultural interests, most effectively protecting public health and the environment. Before joining EPA, Ms. Marcus served as the president of the Board of Public Works of the city of Los Angeles, California. In that position, she led the 6,700 employees of the city's Department of Public Works who have responsibility for the city's wastewater, solid waste (including recycling), street maintenance, street lighting, street trees, and major construction contracting programs. The department also worked with public- and private-sector groups on such specialized programs as waste minimization., graffiti abatement. motion picture permitting; and water reclamation. Ms. Marcus presided over the department through a time of great change and challenge; during her tenure, the department won numerous national awards for its ambitious

initiatives and achievements in wastewater treatment, recycling and source reduction.. and pollution prevention. Ms. Marcus also has extensive experience as a privare-sector and public interest lawyer, as well as a community organizer. She is perhaps best known locally for her work to clean up Santa Monica Bay, most notably as a founder and general counsel to the organization Heal the Bay. She has served as the director of litigation for Public Counsel, a public interest law firm; an associate at the law firm of Munger, Tolles & Olson; a visiting fellow at the Center for Law in the Public Interest; a law clerk to the Honorable Harry Pregerson ; (9th Circuit Court of Appeals); and legislative assistant to former Representative Anthony C. Beilenson (D).